

CANDRIP (Bill C-15) Canada's Tool for Re-Colonization

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UNDRIP ORIGINAL ARTICLES ON SELF-DETERMINATION, LAND RESTORATION & RESTITUTION vs. 2007 VERSION

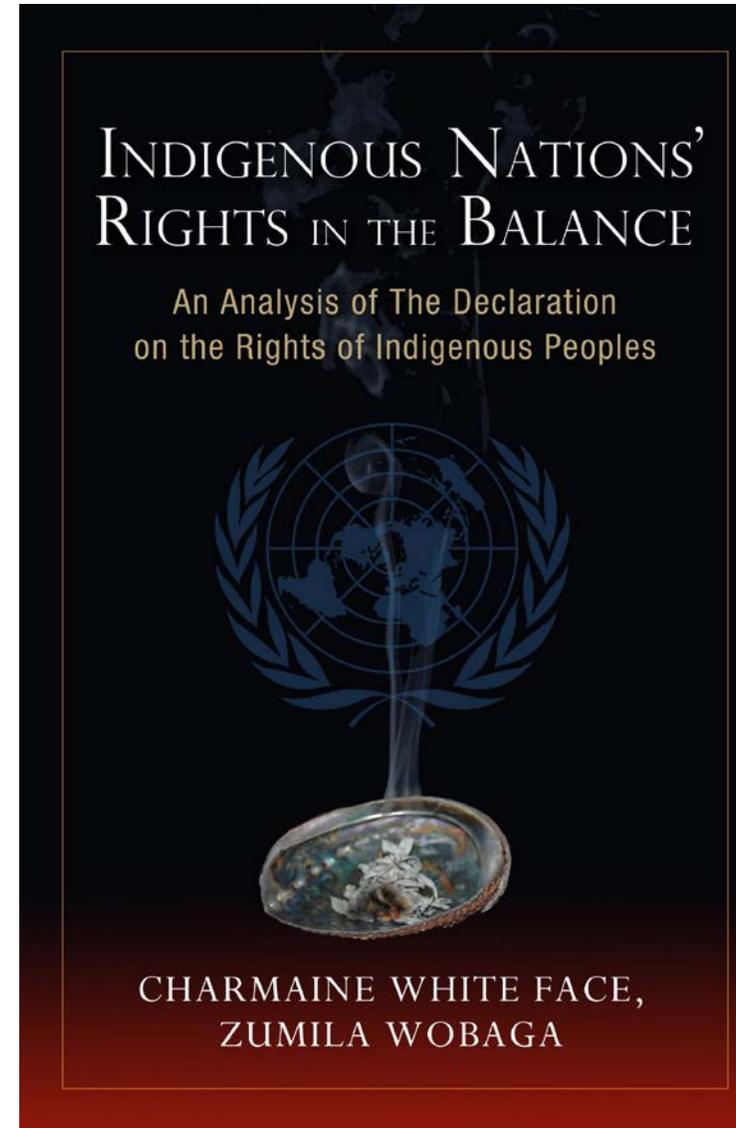
UNDRIP Was Watered Down at UN

- ▶ There were three main drafts of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- ▶ 1994, the Original Text version.
- ▶ 2006, a second amended version of UNDRIP was the Human Rights Council version.
- ▶ 2007, the final version of UNDRIP is the **United Nations General Assembly version**, passed by the UN General Assembly after changes were made by the African Union, changes that were never properly presented to Indigenous Peoples globally.
- ▶ It's the first Original Text version of UNDRIP drafted by hundreds of Indigenous representatives over a period of years with their direct participation, which was then undermined by nation states in politicized negotiations. The United Nations General Assembly by resolution adopted the UNDRIP in 2007.

Indigenous Nations Rights in the Balance

An Analysis of the Declaration on the Rights of Indigenous Peoples

- ▶ Charmaine White Face is an Oglala Tituwan Oceti Sakowin writer, scientist and great-grandmother. She wrote an in-depth analysis of the UNDRIP based on her experiences at the UN debates called: Indigenous Nations Rights in the Balance published by Living Justice Press, St. Paul, MN. She can be reached at cwhiteface@gmail.com.



2007 Version UNDRIP – Articles 3 & 4

Article 3

- Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

- Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

2007 Version UNDRIP - Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have **traditionally owned, occupied or otherwise used or acquired.**
2. Indigenous peoples have **the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.**
3. States shall give **legal recognition and protection to these lands, territories and resources.** Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

2007 Version UNDRIP - Article 27

- ▶ States shall establish and implement, in conjunction with indigenous peoples concerned, **a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.** Indigenous peoples shall have the right to participate in this process.

2007 Version UNDRIP - Article 28

1. Indigenous peoples have the **right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation**, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, **compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.**



Canada
Bill C-15
(CANDRIP)

Canada's Conflict - Bill C-15

- ▶ On June 21, 2021, what the federal government calls "National Indigenous Peoples Day", the Administrator of the Government of Canada, the Chief Justice of the Supreme Court of Canada, **Richard Wagner, granted Royal Assent by written declaration for Bill C-15 (CANDRIP).**
- ▶ By having the SCC Chief Justice as the administrator for the Office of Governor-General **sign CANDRIP (Bill C-15) into federal law**, we saw the **three branches of the federal government** (judicial, legislative, executive) converge in passing the federal **United Nations Declaration on the Rights of Indigenous Peoples Act** (2007 version of UNDRIP). Apparently, with no care about of the potential conflict should **CANDRIP (Bill C-15)** be potentially challenged in court.



WHAT IS CONTENT OF BILL C-15?

- ▶ **PREAMBLE**-The Preamble although positive, does not contain binding obligations, preambles can have significant interpretative value. The legal effect of the preamble is confirmed by section 13 of the **federal Interpretation Act**, which says that:
- ▶ *"The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object."*
- ▶ The main criticism is that some elements of the preamble should be repeated in the body of the legislation in order to give it greater prescriptive value and legal weight.
- ▶ There are seven main, operative sections of Bill C-15.
- ▶ **SECTION 1-TITLE-United Nations Declaration on the Rights of Indigenous Peoples Act. (UNDRIPA)**

WHAT IS CONTENT OF BILL C- 15?

SECTION 2(2)-RIGHTS OF INDIGENOUS PEOPLES- maintains the common law interpretation of section 35(1) which is heavily based on the colonial **Doctrine of Discovery**. This section was not amended to reject the **Doctrine of Discovery** only the Preamble was amended to reject it, and section 35(2) of the Constitution Act, 1982, meaning Aboriginal Peoples **OF CANADA**.

SECTION 3-DESIGNATION OF MINISTER-There is no lead Minister identified as section 3, the federal Cabinet can assign any Minister “for the purposes of any provision of this Act.” **There are now three main Ministers on Indigenous issues.** (ISC, CIRNAC & Northern Affairs)

WHAT IS CONTENT OF BILL C- 15?

[SECTION 2(2)-RIGHTS OF INDIGENOUS PEOPLES] the common law interpretation of section 35(1) relies heavily on the Doctrine of Discovery, which negatively impacts daily life for Indigenous Peoples and Nations in Canada including:

- The imposition of Crown sovereignty over Indigenous peoples, including self-government rights.
- Disregarding Indigenous laws and legal traditions.
- Establishing that the Crown has “ultimate title” to land.
- The burden of proof imposed on Indigenous Peoples and Nations to establish their rights in Canadian courts.
- The racist and “frozen in time” “Van der Peet” legal test for establishing Aboriginal rights.
- The ability for the Crown to infringe Aboriginal rights based on the “Sparrow” legal test.
- The erosion of the Government’s duty to consult and accommodate to nothing more than a procedural right that is reviewable based on administrative law principles

WHAT IS CONTENT OF BILL C-15?

SECTION 4-PURPOSE OF ACT-(a) **affirm the Declaration** as a universal international human rights instrument with application in Canadian law.

[4(a) confirms that the Declaration can be applied by Canadian courts. This principle already exists in Canadian law, so Article 4(a) is merely an affirmation of the status quo.]

(b) **provide a framework** for the Government of Canada's implementation of the Declaration.

WHAT IS CONTENT OF BILL C-15?

[4(b) specifies that the objective is "to provide a framework" for implementation by the Canadian government. The purpose of Bill C-15 is not to implement the Declaration, but rather to provide a framework for its implementation in the future. C-15 is not an immediate implementation of the Declaration.]

SECTION 5-MEASURES FOR CONSISTENCY OF LAWS WITH UNDRIP-The Government of Canada will have to "take all necessary steps" to make federal laws consistent with the Declaration. There is no immediate implementation of the Declaration, this section establishes an ongoing process of working with Indigenous peoples for legal review and reform.

WHAT IS CONTENT OF BILL C-15?

SECTION 6-ACTION-PLAN-Similar to the B.C. Bill 41 DRIPA this section of the Bill C-15 gives the government of Canada the dominant role in developing an “**action-plan**” to implement UNDRIP in the future, in relation to federal laws, since under Canada’s constitutional division of federal and provincial powers, the provincial governments have a veto in subject areas that may affect their jurisdiction.

SECTION 7-REPORTING TO PARLIAMENT-on **measures taken** and the **action-plan**. Canada controls the pen in preparing the Annual Report.

Bill C-15 – HoC Amendments

The House of Commons made several amendments to the text of Bill C-15. The Senate did not.

Most of the amendments applied to the preamble, although there are two substantive changes to the provisions of Bill C-15 [in section 6]. Amendments include:

references to racism and systemic racism in the preamble;

expansion of the preamble to identify the doctrines of discovery and terra nullius as “racist, scientifically false, legally invalid, morally condemnable and socially unjust”;

recognition in the preamble that Aboriginal and Treaty rights are capable of evolution and growth and are not frozen;

reduction of the time limit for preparing the action plan from three to two years [section 6]; and

the action plan must include measures to address racism and systemic racism [section 6].

C-15 Issues

- ▶ The federal Bill C-15 Action-Plan will likely be based on using existing policy and legislation, like Bill C-91 (Indigenous Languages) & Bill C-92 (Indigenous Child & Family Services) to implement the UNDRIP standards.
- ▶ The 2021-2022 CIRNAC Departmental Plan seems to indicate this, priorities are:
- ▶ *CIRNAC will continue discussions to co-develop modern treaties, self-government agreements and other constructive arrangements, and explore new ways of working with First Nations, Inuit and Métis communities.*
- ▶ *Canada, as represented by CIRNAC and other federal departments, will progress in the implementation of the **Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia**, in partnership with the other Principals of the British Columbia treaty process (the First Nations Summit and the Province of British Columbia).*

THE END

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THE RECONCILIATION MANIFESTO

RECOVERING THE LAND
REBUILDING THE ECONOMY

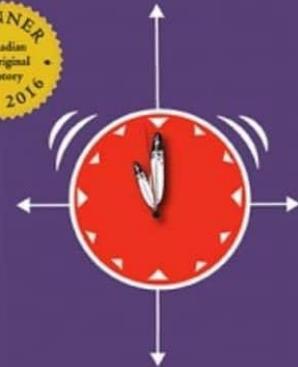
Arthur Manuel
and
Grand Chief Ronald Derrickson

Preface by NAOMI KLEIN

NATIONAL BESTSELLER

UNSETTLING CANADA

A NATIONAL WAKE-UP CALL



ARTHUR MANUEL
GRAND CHIEF RONALD M. DERRICKSON
FOREWORD BY NAOMI KLEIN

Must read books